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In re. Application of
BENVENISTE
Application No.: 10/563,687
PCT No.: PCT/EP04/09242
Int. Filing Date: 02 July 2004
Priority Date: 02 July 2003
Attorney Docket No.: NY-GRYN 229-US
For: DIAGNOSTIC TEST

DECISION ON PETITION

UNDER 37 CFR 1.42

This decision is in response to applicant's "RESPONSE TO NOTIFICATION OF MISSING REQUIREMENTS" filed 11 December 2006 In the United States Patent and Trademark Office (USPTO). The response is being treated as a request for status pursuant to 37 CFR 1.42. No petition fee is required.

BACKGROUND

On 02 July 2004, applicant filed international application PCT/EP04/09242, which claimed a priority date of 02 July 2003. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 20 January 2005. Pursuant to 37 CFR 1.495, the deadline for payment of the basic national fee in the United States was to expire 30 months from the priority date, 02 January 2006.

On 03 January 2006, applicant filed a transmittal letter for entry into the national stage in the United States accompanied by the requisite basic national fee and an English translation of the international application.

On 09 May 2006, applicant was mailed a "NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371" (Form PCT/DO/EO/905) informing applicant of the need to provide an oath or declaration of the inventor, in compliance with 37 CFR 1.497(a) and (b), identifying the application by the International application number and international filing date. Applicant was afforded two months to file the proper reply and informed that this period could be extended pursuant to 37 CFR 1.136(a).

On 11 December 2006, applicant filed the present response which included a combined declaration and power of attorney which was executed by Laurent Benveniste as legal representative to the estate of deceased inventor Jacques Benveniste. The response was accompanied by a petition for a five-month extension of time and payment of the appropriate extension of time fee. 09 December 2006 being a Saturday, the response with extension of time is

considered timely filed.

DISCUSSION

Pursuant to 37 CFR 1.42, first sentence:

"In case of the death of the inventor, the legal representative (executor, administrator, etc.) of the deceased inventor may make the necessary oath or declaration, and apply for and obtain a patent."

An examination of the filed declaration and power of attorney finds that the document lists the post office, residence and citizenship for both the deceased inventor Jacques Benveniste and the legal representative to his estate, Laurent Benveniste. As such, the declaration is in compliance with 37 CFR 1.497(a)-(b)

In light of the above, it is proper to grant applicant's request at this time.

CONCLUSION

Applicant's request for status under 37 CFR 1.42 is **GRANTED**.

This application will be given an international application filing date of 02 July 2004 and a date of **11 December 2006** under 35 U.S.C. 371(c)(1), (c)(2) and (c)(4).

This application is being returned to the DO/EO/US for processing in accordance with this decision.



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